

NOT TO BE PUBLISHED IN THE MAINE REPORTER

STATE OF MAINE

SUPREME JUDICIAL COURT

Docket No. BAR-85-104

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BOARD OF OVERSEERS OF THE BAR)

v.)

JAMES J. FITZPATRICK)

OPINION AND ORDER

APR 3 1986

SUPREME JUDICIAL COURT

This matter came on for hearing before the Supreme Judicial Court on March 25, 1986. The respondent James J. Fitzpatrick appeared pro se and the Board of Overseers of the Bar was represented by and through counsel J. Scott Davis. Disciplinary proceedings before the Grievance Commission were commenced by a petition filed by Bar Counsel setting forth specific charges of alleged misconduct as required by M. Bar R. 7(e)(2). After hearing, the Grievance Commission determined pursuant to M. Bar R. 7(e)(4) that a complaint should be concluded by a public reprimand. Thereafter, Bar Counsel filed an information pursuant to M. Bar R. 7(e)(6)(C) and the record of proceedings pursuant to M. Bar R. 7(e)(6)(C)(i). The court has reviewed the decision of the Grievance Commission to seek a reprimand upon the existing record pursuant to M. Bar R. 7(e)(6)(C)(iii). The court reviews the findings of fact of the Commission for clear error by virtue of M. Bar R. 7(e)(6)(C)(iv). See Board of Overseers v. Dineen, 481 A.2d 499, 502 (Me. 1984).

The Grievance Commission first concluded that respondent violated M. Bar R. 3.6(a)(2) and (3) by his neglect of a legal matter entrusted to him and by his handling of it without adequate

preparation. The Commission found that as of October 10, 1985, the respondent had failed to take the actions necessary to close the estate of Amanda Stones, who had died on September 14, 1979. The record reveals that in the six years he had failed to adequately prepare or file certain accountings or other documents required in the administration of the estate, and to resolve an outstanding Social Security Administration claim pending against the estate. The Commission's finding that his unjustified failure to settle over some six years a relatively uncomplicated estate constituted inadequate preparation and neglect of a legal matter entrusted to him is therefore not clearly erroneous.

The Commission also concluded that the respondent had violated M. Bar R. 3.2(f)(3), proscribing conduct involving dishonesty, fraud, deceit, or misrepresentation. As early as September of 1981, the respondent had received requests from beneficiaries of the estate and their attorneys to complete the administration of the estate and to effect final distribution. To these requests were added those of the Judge of Probate for Cumberland County in November of 1981 and urging of Bar Counsel when earlier disciplinary proceedings were dismissed. Since then, respondent has repeatedly represented and promised to the beneficiaries that administration of the estate would be completed. The record provides ample support for the Commission's finding that the respondent had in fact misrepresented to the beneficiaries, Bar Counsel, and to the Cumberland County Probate Judge the true status of the estate and his progress in effecting its settlement.

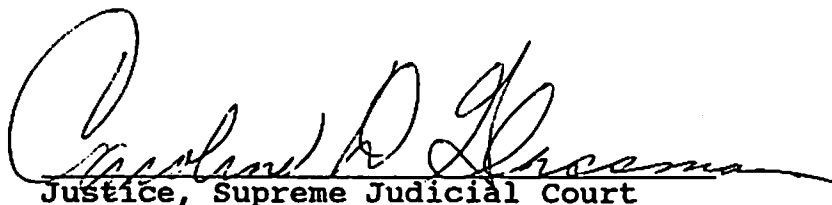
The Commission further concluded that the respondent failed to respond fully or timely to requests and directives of Bar Counsel in violation of M. Bar R. 2(c). This finding is also amply supported by the record.

Finally, the Commission has the authority to conduct a hearing on formal charges of misconduct and recommend that a public reprimand be administered. M. Bar R. 7(c). Since the court's review of the Board's decision discloses neither clear error nor abuse of discretion, the recommendation of the Commission is accepted.

The Executive Clerk of the Supreme Judicial Court is directed to make the following docket entry:

Decision of the Board of Overseers affirmed.
Respondent James J. Fitzpatrick reprimanded
for his conduct in violation of M. Bar R.
2(c), 3.2(f)(3), and 3.6(a)(2) and (3).

Dated: April 3, 1986


Justice, Supreme Judicial Court

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